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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,374	07/18/2003	Stephen Alan Smith	3177 P 427	4371

7590 04/20/2006

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/622,374	Applicant(s) SMITH ET AL.	
	Examiner Robin A. Hylton	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 30-38, 41-44, 47-52 and 66-71 is/are pending in the application.
- 4a) Of the above claim(s) 43 and 44 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-16, 33-38, 66 and 67 is/are allowed.
- 6) ☒ Claim(s) 30-32, 41, 42, 68 and 69 is/are rejected.
- 7) ☒ Claim(s) 47-52, 70 and 71 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 43 and 44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 25, 2005.
2. Wherein claim 1 is deemed allowable, claims 8 and 9 have been rejoined and are also deemed allowable.

Claim Objections

3. Claim 51 is objected to because of the following informalities: there is no punctuation at the end of the claim. Appropriate correction is required.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claim 41 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,3,21,23,24 and 26 of copending Application No. 11/211,319 (US Publication 2006/0000832). Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a lid having a cover and a moveable element rotatably mounted on a support of the cover. The instant claim more broadly sets forth a means for rotatably supporting the element whereas the co-pending claims set forth a support and its location with respect to the cover. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth the support structure and its relative location on the cover to provide a more distinguishing feature of the lid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claim 41 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 15 of copending Application No. 11/211,319 (US Publication 2006/0000832). Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a lid having a cover and a

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moveable element rotatably mounted on a support of the cover. The published claim further sets forth the cover as being thermoformed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of thermoforming the instant lid to provide a method of forming the lid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claim 42 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 21-23,26,27, and 33 of copending Application No. 11/211,319 (US Publication 2006/0000832). Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a lid having a cover and a moveable element rotatably mounted on a support of the cover. The claims set forth varying terminology to set forth the same structure.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claim 41 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4,31, and 41 of copending Application No. 10/447,085 (US Publication 2003/0197012). Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a lid having a cover and a moveable element rotatably mounted on a support of the cover. The instant claim more broadly sets forth a means for rotatably supporting the element whereas the co-pending claims set forth a support and its location with respect to the cover. It would have been obvious to one

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of ordinary skill in the art at the time the invention was made to set forth the support structure and its relative location on the cover to provide a more distinguishing feature of the lid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claim 42 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of copending Application No. 10/954,827 (US Publication 2005/0127075). Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a lid having a cover and a moveable element rotatably mounted on a support of the cover. The published claim sets forth additional structural details of the lid not set forth in the instant claim. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth additional structural details of the top wall to provide more distinguishing features of the lid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claim 41 is rejected under 35 U.S.C. 102(b) as being anticipated by Hess (US 1,157,537).

Wherein applicant has not invoked the provisions of 35 USC 112, 6th paragraph, the structure of Hess anticipates the claims. The means for rotatably supporting the element 10 is seen in figure 3 to be the junction of elements (5) and (6).

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12. Claims 68 and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by Wyatt (US 5,294,014).

As seen in figure 7, the support member extends radially inward from an inner surface (channel 48) of the cover.

13. Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Wyatt et al. or Poulos.

Each of the patents inherently require at least one mechanism to hold one of the lid portions stationary while the other lid portion is mounted thereto and the actuator and slot aligned.

Claim Rejections - 35 USC § 103

14. Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyatt or Poulos.

Wherein the method of assembly for either lid of Wyatt and Poulos is not explicit with regard to a pair of external guides for mounting the lid portions, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a pair of external guides for mounting the lid portions and aligning the slot and an actuator. Doing so provides a more stable environment for assembly with less risk of damage to either or both lid portions by using only one external guide.

15. Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being obvious over Smith et al. (US Publication 2006/0000832).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C.

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102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2). The published claims further set forth thermoforming the lid, structure for the support member, and structural relationships between the cover and the support member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth the support structure and its relative location on the cover to provide a more distinguishing feature of the lid.

16. Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US Publication 2006/0000832). The published claims further set forth thermoforming the lid, structure for the support member, and structural relationships between the cover and the support member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth the support structure and its relative location on the cover to provide a more distinguishing feature of the lid.

17. Claim 41 is rejected under 35 U.S.C. 103(a) as being obvious over Smith et al. (US Publication 2003/0197012).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2). The published claims set forth structure for the support member and structural relationships between the cover and the support member whereas the instant claim sets forth a means for rotatably supporting the lid element.

18. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over (US Publication 2003/0197012). The published claims set forth structure for the support member and structural relationships between the cover and the support member whereas the instant claim sets forth a means for rotatably supporting the lid element.

19. Claim 42 is rejected under 35 U.S.C. 103(a) as being obvious over Smith et al. (US Publication 2005/0127075).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C.

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102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2). The published claim sets forth additional structural details of the lid not set forth in the instant claim. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth additional structural details of the top wall to provide more distinguishing features of the lid.

20. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US Publication 2005/0127075). The published claim sets forth additional structural details of the lid not set forth in the instant claim. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth additional structural details of the top wall to provide more distinguishing features of the lid.

Response to Arguments

21. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

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Allowable Subject Matter

22. Claims 47-50,52,70 and 71 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

23. Claims 1-16,33-38,66, and 67 are allowed over the prior art of record.

Response to Arguments

24. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

25. This Office action is made non-final in view of the new rejections under nonstatutory obviousness-type double patenting.

26. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

27. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

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Signature_____

Date_____

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

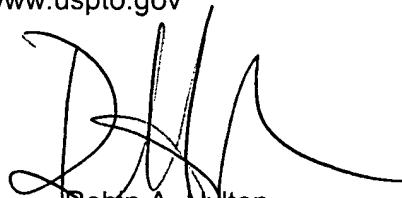
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
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- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH
April 15, 2006



Robin A. Hylton
Primary Examiner
GAU 3727